Supreme Court, U.S.
FILED
95-607 OCT 12 1995
No.
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

EDWARD EUGENE PURMORT,
and GARY TIPTON,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Law Offices Of
MICHAEL R. MCDONNELL, INC.

By: DAVID JOSEPH MACHER
Attorney at Law
Member of the Bar
United States Supreme Court
440 East La Habra Boulevard
La Habra, California 90631
(310) 694-3827
(714) 870-9972

Attorney for Petitioner Edward Eugene Purmort

ROGER S. HANSON, ESQ.
Attorney at Law
Member of the Bar
United States Supreme Court
1517 East 4th Street
Santa Ana, California 92701
(714) 953-0638

Attorney for Petitioner Gary Tipton

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

58 pp

QUESTIONS PRESENTED

1. For bankers to be guilty of "willfully" structuring a currency transaction "for the purpose of evading" reporting requirements imposed by law upon financial institutions, must a bank customer have a nefarious purpose for "structuring" the currency, or is it sufficient that the customer knew of the institution's reporting obligations and sought to circumvent them?

2. When spouses separately purchase with currency a total of eight cashier's checks for $10,000 each over a four-business-day period and the applicable federal regulations do not provide any guidance as to whether the purchases should be aggregated for purposes of reporting large currency transactions, should the trial court instruct the jury on aggregation as an issue of law or leave the matter of combination to the jury's discretion as a question of fact?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINION BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 3

STATEMENT OF FACTS 4

REASONS FOR GRANTING THE WRIT 6

I. THE CRIME OF STRUCTURING CURRENCY TRANSACTIONS IN VIOLATION OF 31 U.S.C. §§ 5313(a) AND 5324(a)(3) REQUIRES PROOF BEYOND A REASONABLE DOUBT THE ACCUSED ACTED WITH A NEFARIOUS PURPOSE AND THE JURY MUST BE INSTRUCTED REGARDING THIS ELEMENT OF THE OFFENSE 6

II. BECAUSE THE CONTROLLING FEDERAL REGULATIONS FAIL TO REQUIRE AGGREGATION OF SEPARATE TRANSACTIONS BY SPOUSES IN A SINGLE BUSINESS DAY AND THE TRIAL COURT ERRONEOUSLY INSTRUCTED THE JURY AGGREGATION WAS A QUESTION OF FACT, PETITIONERS WERE WRONGLY CONVICTED OF CONSPIRACY TO STRUCTURE CURRENCY TRANSACTIONS AND STRUCTURING CURRENCY TRANSACTIONS IN VIOLATION OF 31 U.S.C. § 5324 12

CONCLUSION 17

TABLE OF CONTENTS – Continued

Page

APPENDIX .....App. 1

(a) Order and Amended Opinion of the United States Court of Appeals for the Ninth Circuit .....App. 1

(b) Opinion of the United States Court of Appeals for the Ninth Circuit .....App. 3

TABLE OF AUTHORITIES

Page

CASES

Carella v. California, 491 U.S. 263 (1989) 16

Chapman v. California, 386 U.S. 18 (1967) 16

In re Winship, 397 U.S. 358 (1970) 16

McNamara v. United States, 867 F.Supp. 369 (E.D. Va. 1994) 9

Ratzlaf v. United States, 510 U.S. ___, 114 S.Ct. 655 (1994) ..... *passim*

Sandstrom v. Montana, 442 U.S. 510 (1979) 16

Sullivan v. Louisiana, 508 U.S. ___, 113 S.Ct. 2078 (1993) 16

United States v. Bencs, 28 F.3d 555 (6th Cir. 1994) 7

United States v. Garza, 42 F.3d 251 (5th Cir. 1995) 7

United States v. Gaudin, ___ U.S. ___, 115 S.Ct. 2310 (1995) 16

United States v. Gimbel, 830 F.2d 621 (7th Cir. 1987) 13

United States v. Hove, 52 F.3d 233 (9th Cir. 1995) 7

United States v. Jackson, 33 F.3d 866 (7th Cir. 1994) 7

United States v. Jones, 21 F.3d 165 (7th Cir. 1994) 7

United States v. Kim, Cir. 9, No. 93-10108 7

United States v. Marshall, 56 F.3d 1210 (9th Cir. 1995) 7

United States v. Obiechie, 38 F.3d 309 (7th Cir. 1994) 7

United States v. Oreira, 29 F.3d 185 (5th Cir. 1994) 7

TABLE OF AUTHORITIES – Continued

Page

United States v. Retos, 25 F.3d 1220 (3rd Cir. 1994) 7

United States v. Rogers, 18 F.3d 265 (4th Cir. 1994) 7

United States v. Weems, 49 F.3d 528 (9th Cir. 1995) 7

RULES & STATUTES

18 U.S.C. § 371 ..... 1, 3

28 U.S.C. § 1254 2

31 U.S.C. § 5313 ..... 1, 2, 3

31 U.S.C. § 5324 ..... *passim*

31 C.F.R. § 103.11 13

31 C.F.R. § 103.22 ..... 13, 15

OTHER AUTHORITY

D. Poole, *What Jane Austin Ate and Charles Dickens Knew* (1993) 14

S. Welling, *Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions*, 41 Fla. L.Rev. 287 (1989) 13

PETITION FOR WRIT OF CERTIORARI

Petitioners, Edward Eugene Purmort and Gary Tipton, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on May 24, 1995, and the subsequent modification of the opinion, denial of a petition for rehearing and rejection of a suggestion for rehearing en banc on July 21, 1995.

OPINION BELOW

A jury in the United States District Court for the Central District of California convicted Edward Eugene Purmort and Gary Tipton of conspiracy (18 U.S.C. § 371) to knowingly structure financial transactions to evade the currency reporting requirements of 31 U.S.C. § 5313(a) in violation of 31 U.S.C. § 5324(a)(3), and knowingly structuring financial transactions to evade the currency reporting requirements.

On May 24, 1995, a divided panel of the United States Court of Appeals for the Ninth Circuit affirmed the judgment of the district court. On July 21, 1995, a divided panel of the court of appeals modified the earlier opinion, denied a petition for rehearing and rejected a suggestion for rehearing en banc.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on May 24, 1995, and

modified on July 21, 1995. This Court has jurisdiction to consider the petition pursuant to 28 U.S.C. § 1254.

STATUTORY PROVISIONS

(a) 31 U.S.C. § 5313:

(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

(b) 31 U.S.C. § 5324:

(a) Domestic coin and currency transactions. – No person shall, for the purpose of evading the reporting requirements of section 5313(a), section 5325, or the regulations issued thereunder or section 5325 or regulations prescribed under such section 5325 with respect to such transaction –

(3) structure or assist in structuring, or attempt to structure, or assist in structuring, any transaction with one or more domestic financial institutions.

STATEMENT OF THE CASE

An indictment filed in the United States District Court for the Central District of California on August 31, 1993, charged Ahd Haddad, Christine Haddad, Gary Tipton and Edward Purmort with conspiracy (18 U.S.C. § 371) to knowingly structure financial transactions to evade the currency reporting requirements of 31 U.S.C. § 5313(a) in violation of 31 U.S.C. § 5324(a)(3), as to eight $10,000 cashier's checks purchased by the Haddads on four business days in September, 1988, and knowingly structuring financial transactions to evade the currency reporting requirements as to the same cashier's checks. Ahd Haddad pleaded guilty to the conspiracy charge and agreed to testify against Purmort and Tipton. The charges against Christine Haddad were dismissed on the government's motion prior to trial.

Trial began on January 25, 1994. On February 10, 1994, the jury convicted Purmort and Tipton on both counts. Sentencing took place on March 29, 1994. The court placed the petitioners on probation for three years and ordered Purmort to spend the first two months in a community corrections center as directed by the probation officer. Tipton was ordered to spend the first four months in a community corrections center. Execution of the court's orders was stayed pending appeal. Timely notices of appeal were filed by Tipton on April 4, 1995, and by Purmort on April 5, 1994.

On appeal to the United States Court of Appeals for the Ninth Circuit, petitioners argued the trial court failed to correctly instruct the jury on the elements of structuring financial transactions to avoid the filing of a currency

transaction report (CTR) pursuant to this Court's decision in *Ratzlaf v. United States*, 510 U.S. ___, 114 S.Ct. 655 (1994), the government failed to present substantial evidence petitioners participated in a conspiracy to structure financial transactions and failed to present substantial evidence that petitioners structured transactions to avoid the CTR requirement.

A divided panel of the Ninth Circuit disagreed with these and additional claims of error. The court ruled the jury instruction on structuring financial transactions was correct, the record included substantial evidence petitioners committed the alleged offenses and affirmed the judgment.

STATEMENT OF FACTS

During 1988 Edward Purmort was branch manager of the Security Pacific National Bank at 11195 Anderson Street, Loma Linda, California. Gary Tipton was a branch assistant vice president. Bank personnel were assigned to "operations" or "platform" positions. Purmort was responsible for the "platform" business and Tipton supervised *operations* activities. Consistent with the separation of tasks, Purmort had little contact with the *operations* side of the bank. During 1988 Ahd Haddad operated the Stereo and Video Shop in Loma Linda and was a business account customer at Security Pacific.

On June 6, 1988, Haddad brought approximately $45,000.00 cash to Tipton for the purchase of cashier's checks, including four checks for $9,800.00 each, and a fifth check in the amount of $4,305.00. The checks were

payable to Pyle Industries, an equipment supplier for Haddad's business. During the transaction, Purmort spoke with Ahd Haddad about his cash transactions.

In September 1988, the Haddads purchased a piece of property. The transaction was completed through Spring Mountain Escrow. The Haddads deposited $95,824.00 with the escrow company. The bulk of the escrow money came in gifts from family members in Syria and Australia. On September 21, 22, 23, and 26, 1988, Ahd and Christine Haddad each purchased $10,000.00 cashier's checks payable to Spring Mountain Escrow with cash. Haddad elected to break down the cash into a series of $10,000.00 cashier's checks to avoid the filing of a CTR. Haddad wanted to circumvent the CTR requirement to protect his father in Syria. Haddad worried his father could be killed if that nation's government learned money was being removed from the country.

Both petitioners took the stand in their own defense. When Purmort arrived at the Loma Linda office in November 1985, Gary Tipton was in charge of operations. Tipton's competence permitted Purmort to focus his efforts on developing client relationships and attracting new accounts. He therefore had very little contact with the operations side of the bank. Both Purmort and Tipton denied entering into an agreement with the Haddads to structure Haddad financial transactions to avoid CTR filing requirements and denied structuring financial transactions for the Haddads.

Tipton testified he contacted the bank's central CTR compliance unit in Los Angeles and was instructed a

husband and wife could each lawfully purchase a separate cashier's check for $10,000 on a given business day without filing a large currency transaction report. The government produced no evidence to contradict the CTR unit's instruction to Tipton.

REASONS FOR GRANTING THE WRIT

I.

THE CRIME OF STRUCTURING CURRENCY TRANSACTIONS IN VIOLATION OF 31 U.S.C. § 5313(a) AND 5324(a)(3) REQUIRES PROOF BEYOND A REASONABLE DOUBT THE ACCUSED ACTED WITH A NEFARIOUS PURPOSE AND THE JURY MUST BE INSTRUCTED REGARDING THIS ELEMENT OF THE OFFENSE

In *Ratzlaf v. United States*, 510 U.S. ___, 114 S.Ct. 655 (1994), this Court construed 31 U.S.C. section 5324(a)(3), which prohibits any structuring of currency transactions "for the purpose of evading" a reporting requirement. Section 5322 makes such conduct a felony if committed "willfully." In *Ratzlaf*, the defendant ran up a $160,000 gambling debt at a Nevada casino. Ratzlaf attempted to settle the debt with cash but balked when he was informed a currency transaction report (CTR) would be necessary as the transaction exceeded $10,000. The casino provided a limousine and driver, and the Ratzlafs purchased a series of cashier's checks, each for less than $10,000, with cash at local banks.

Ratzlaf argued he could not be convicted of willfully violating the anti-structuring laws merely because he

knew financial institutions are required to report cash transactions in excess of $10,000 and acted to avoid the requirement. A "willful" violation, according to Ratzlaf, required proof of a deliberate violation of a known legal duty. *Ratzlaf v. United States, supra,* 114 S.Ct. at p. 657. Ratzlaf also maintained the "for the purpose of evading" language in section 5324(a) required proof he acted with a purpose to evade a known legal duty rather than mere avoidance of disclosure of personal information.

This Court agreed and held a "willful" violation of section 5324(a)(3) requires proof the accused knew the structuring was unlawful. *Ratzlaf v. United States, supra,* 114 S.Ct. at p. 663. Subsequent decisions by the circuit courts have focused upon the knowledge component of *Ratzlaf.* New trials have been ordered for numerous defendants convicted of structuring financial transactions without the jury being instructed the accused must act with knowledge the conduct is unlawful. *See e.g., United States v. Kim,* Cir. 9, No. 93-10108; *United States v. Marshall,* 56 F.3d 1210 (9th Cir. 1995); *United States v. Hove,* 52 F.3d 233 (9th Cir. 1995); *United States v. Weems,* 49 F.3d 528 (9th Cir. 1995); *United States v. Garza,* 42 F.3d 251 (5th Cir. 1995); *United States v. Obiechie,* 38 F.3d 309 (7th Cir. 1994); *United States v. Jackson,* 33 F.3d 866 (7th Cir. 1994); *United States v. Oreira,* 29 F.3d 185 (5th Cir. 1994); *United States v. Bencs,* 28 F.3d 555 (6th Cir. 1994); *United States v. Retos,* 25 F.3d 1220 (3rd Cir. 1994); *United States v. Jones,* 21 F.3d 165 (7th Cir. 1994); *United States v. Rogers,* 18 F.3d 265 (4th Cir. 1994).

The decisions have generally not recognized the Court also embraced the argument the "for the purpose of evading" language of section 5324(a) requires proof the

accused acted with a purpose to evade a known legal duty rather than mere avoidance of disclosure of personal information. This conclusion, however, is an inevitable consequence of *Ratzlaf*. As this Court explained:

> "Undoubtedly there are bad men who attempt to elude official reporting requirements in order to hide from Government inspectors such criminal activity as laundering drug money or tax evasion. But currency structuring is not inevitably nefarious. Consider for example, the small business operator who. . . . [t]o reduce the risk of an IRS audit . . . brings $9,500 in cash to the bank twice each week in lieu of transporting over $10,000 once each week. . . . Nor is a person who structures a currency transaction invariably motivated by a desire to keep the Government in the dark. But under the Government's construction an individual would commit a felony against the United States by making cash deposits in small doses, fearful that the bank's reports would increase the likelihood of burglary, or in an endeavor to keep a former spouse unaware of wealth." *Ratzlaf v. United States, supra*, 114 S.Ct. at p. 661.

The Court's final example – approving a Civil War era debtor purchasing two ten dollar bank checks rather than a single twenty dollar check, which would trigger a two cent duty – drives home the point that violation of section 5324(a)(3) not only requires proof beyond a reasonable doubt the defendant was aware structuring the transaction was unlawful but it must also be demonstrated the structuring was for a nefarious purpose rather than an arrangement of the individual's personal business to avoid the disclosure of private information. Any

other conclusion renders the Court's analysis superfluous.

This facet of the Court's decision has received scant recognition in the reported decisions. In *McNamara v. United States*, 867 F.Supp. 369 (E.D. Va. 1994), an attorney imprisoned for structuring financial transactions was granted a new trial based upon incompetence of counsel for failure to recognize *Ratzlaf* was before the Supreme Court and the significance of the forthcoming decision for the defendant's trial. According to the district court:

> "The Supreme Court held in *Ratzlaf* that 'currency structuring is not inherently nefarious.' The Court noted several potential purposes for structuring, such as reducing the risk of any unnecessary and costly audit or reducing the risk of burglary that might result from possession of deposit slips for large sums of money." *Id.* at p. 377, citations omitted.

The tension flowing from a partial understanding of *Ratzlaf* – failure to recognize the structuring prohibition requires a sinister purpose – is acknowledged in the dissent in the present matter: "*Ratzlaf* may be read as though it did not really mean what it said when it declared that the prosecution must show that the defendant 'knew the structuring in which he was engaged was unlawful.' " App. at 14. The present case is therefore an opportunity for the Court to clarify the significance of the *Ratzlaf* decision.

Knowledge of illegality and a nefarious purpose are usually intertwined and can appear as inseparable as two sides of a single coin. In the usual case, knowledge of the prohibition on structuring currency transactions and a

nefarious purpose are coupled as one who acts with knowledge his purpose is unlawful performs the deed for a sinister purpose. For example, in the present matter, the Haddads brought some $45,000 cash to the bank on June 6, 1988, and purchased four cashier's checks for $9,800 each and a fifth check for $4,305. According to Ahd Haddad, he was aware of the currency transaction report requirements and his purpose in breaking down the currency was to avoid triggering a CTR. If Ahd Haddad's testimony is credited, the Haddads violated 31 U.S.C. section 5324(a)(3) in the June 1988 incident by acting with knowledge of the reporting requirements and breaking down a single hoard of cash in excess of $10,000 for the purpose of evading the bank's reporting obligations.

A different scenario, however, is presented by the September 1988 purchases of cashier's checks, the only alleged violations in the present matter. On September 21, 22, 23, and 26, 1988, Ahd Haddad and Christine Haddad each purchased $10,000.00 cashier's checks payable to Spring Mountain Escrow with cash. The bulk of the escrow money came in gifts from family members in Syria and Australia. The balance was a $10,000.00 loan and money from the video business. Ahd Haddad elected to break down the cash to protect his father, a resident of Syria. Haddad was concerned his father could be killed if that nation's government learned money was being removed from the country.

As to the September 1988 transactions, Ahd Haddad remained aware of the general prohibition on structuring financial transactions. Unlike the earlier purchases, the

September cashier's checks were purchased for a blameless reason: to prevent the disclosure of private information – the movement of currency out of Syria to the United States by Haddad's father. This affair can be compared to the examples of innocent structuring in the Court's *Ratzlaf* opinion. Like the small business operator frightened by the possibility of an IRS audit, the homeowner anxious to avoid a burglary and the divorcee concealing wealth from a former spouse, the Haddads in the present matter attempted to keep financial data private to reduce the risk of harm to a parent in a totalitarian nation.

In addition to an innocent purpose, the cashier's checks were purchased without any knowledge the conduct might be unlawful. Petitioner Tipton was informed by the bank's central CTR compliance unit the individual purchases of cashier's checks by husband and wife did not require the filing of a CTR. The government did not contradict this evidence.

The trial court failed to instruct the jury the structuring of financial transactions in violation of section 5324(a)(3) requires proof beyond a reasonable doubt the conduct was for a nefarious purpose. Instead, the court instructed the jury that structuring had three elements: (1) the defendant knew of the reporting requirements for transactions exceeding $10,000; (2) the defendant knowingly structured a currency transaction for the purpose of evading the reporting requirements; and (3) the defendant knew the structuring was unlawful. Counsel for petitioner Tipton objected to the instruction for failure to correctly frame the knowledge and for the purpose of evading requirements. The trial court verbally amended

the instructions by notifying the jury it was up to the panel to decide what currency amounts could be considered a single amount. Petitioners would contend the verbal modification was erroneous since the aggregation issue is an issue of law rather than a question of fact.

The trial court's instructions to the jury failed to articulate an element of the offense, and the government's evidence demonstrated the alleged structuring in this matter could not satisfy the requirements of *Ratzlaf v. United States, supra,* 510 U.S. ___, 114 S.Ct. 655. Petitioners respectfully pray the Court grant the petition for writ of certiorari to settle this important question of statutory interpretation and the proper understanding of this Honorable Court's decision in *Ratzlaf.*

II.

BECAUSE THE CONTROLLING FEDERAL REGULATIONS FAIL TO REQUIRE AGGREGATION OF SEPARATE TRANSACTIONS BY SPOUSES IN A SINGLE BUSINESS DAY AND THE TRIAL COURT ERRONEOUSLY INSTRUCTED THE JURY AGGREGATION WAS A QUESTION OF FACT, PETITIONERS WERE WRONGLY CONVICTED OF CONSPIRACY TO STRUCTURE CURRENCY TRANSACTIONS AND STRUCTURING CURRENCY TRANSACTIONS IN VIOLATION OF 31 U.S.C. § 5324

In addition to articulating an innocent purpose for keeping personal information confidential which demonstrated the cashier's checks were not purchased in violation of the anti-structuring statutes, the individual Haddad purchases were not subject to aggregation and

therefore did not trigger the bank's duty to file a currency transaction report.

Large currency transactions are reported on Form 4789, which was issued by the Department of the Treasury. At the time of the purchases at issue the form provided, in relevant part, "[m]ultiple transactions by or for any person which in any one day total more than $10,000 should be reported as a single transaction, if the financial institution is aware of them." *United States v. Gimbel*, 830 F.2d 621, 625 (7th Cir. 1987). The Secretary of the Treasury codified the Form 4789 aggregation instruction at 31 C.F.R. § 103.22(a)(1) (1988). Consistent with the Regulations and Form 4789, aggregation is required when the multiple transactions exceeding $10,000 are by or on behalf of any "person." Aggregation, then, can be seen as a function of the definition of "person."

According to the Regulations in force at the time of the Haddad transactions, a person was defined as, "An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities." 31 C.F.R. § 103.11(l). According to one commentator, this definition is so broad as to be meaningless. To give the definition meaning, "person" "should be interpreted to mean by or on behalf of *a* person." S. Welling, *Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions*, 41 Fla. L.Rev. 287, 302 (1989).

The commentator's view is consistent with the Regulations, since the definition of "person" includes "[a]n

individual." As applied to husbands and wives, the commentator's view is doubtless appropriate. Any claim a husband and wife are one "person" for purposes of the currency transaction reporting requirements smacks of Victorian England[1] rather than the United States a quarter century after the dawn of Women's Liberation. To construe spouses as one "person" is to demean both parties, contrary to the community and separate property provisions of California law and exposes the proponent of such a view to charges of boorishness and sexism.

The dissent in the present matter recognized the anomaly in the regulations' failure to delineate whether separate purchases by spouses on a single business day must be aggregated for purposes of CTR compliance: "the regulations of the Secretary, remarkably detailed as they are on many points, do not declare that a husband and wife's cash deposits on a given day must be consolidated for purposes of a report." App. at 18.

Petitioner Purmort testified to his confusion as to whether the separate purchases of spouses in a single day must be combined for purposes of CTR compliance. Petitioner Tipton described contacting the bank's compliance unit for guidance on this point and being informed aggregation was not required for separate purchases by

---

[1] According to Blackstone, when spouses exchange vows they become one person "and the husband is that person." D. Poole, *What Jane Austin Ate and Charles Dickens Knew* at p. 184 (1993). Hence, upon marriage the bride lost all claim to her personal property, which her husband could do with as he pleased. *Ibid.*

spouses on a single day. This evidence was not countered by the government.

If spouses are not a single "person" and their separate purchases of cashier's checks in a single day need not be aggregated, then the alleged "structuring" violation in this matter collapses of its own weight. At the time of the alleged offense, the bank reporting requirements imposed a duty when purchases by or on behalf of a person on a given business day exceeded $10,000. 31 C.F.R. 103.22(a)(1). In the present case, neither Ahd or Christine Haddad purchased more than $10,000 in cashier's checks with currency on a single business day. Hence, the bank would not have a CTR filing duty as to any of the purchases.

Counsel for petitioner Tipton objected to the trial court that the jury instructions on structuring currency transactions failed to provide the panel with any guidance as to whether separate purchases by spouses must be combined for CTR preparation. The court acknowledged the instruction might be deficient and orally amended it:

> "It's up to the jury to decide what amounts should be considered as all one amount, so that's one of the things you have to think about, you have transactions that are separate, are they in fact separate or are they not separate; that's the threshold question."

This amendment to the instruction left the jury without any standards or guidance for aggregation. If, as the commentators would have it, separate purchases by spouses are not subject to combination, the court's

instruction was incorrect. At best, the trial court left the jury without any directions in considering the issue.

Deficient jury instructions which relieve the government of the obligation to prove each and every element of a crime are not subject to the harmless error analysis of *Chapman v. California*, 386 U.S. 18, 24 (1967). This Honorable Court has steadfastly embraced this fundamental principle. *Sandstrom v. Montana*, 442 U.S. 510 (1979); *Carella v. California*, 491 U.S. 263 (1989); *Sullivan v. Louisiana*, 508 U.S. ___, 113 S.Ct. 2078 (1993). These decisions recognize the government carries the burden of proving the elements of the charged crime beyond a reasonable doubt consistent with *In re Winship*, 397 U.S. 358, 364 (1970). The Court reaffirmed this precept in the recent unanimous decision of *United States v. Gaudin*, ___ U.S. ___, 115 S.Ct. 2310 (1995). This key principle and protection against unjust conviction was withdrawn from the petitioners in the present matter.

Petitioners would urge the Court to grant the petition to settle this important point of law. In the petitioners' view, separate purchases by spouses on a single business day need not be combined for CTR compliance. Any other view denigrates the value and worth of equal partners and reeks of Victorian paternalism. If the individual purchases were not subject to aggregation and no CTR forms were necessary, no structuring of currency transactions took place. Because no reportable transactions occurred, petitioners were improperly convicted of conspiracy to structure and structuring currency transactions.

CONCLUSION

For all of the reasons stated above, petitioners, Edward Eugene Purmort and Gary Tipton, pray that this Court grant a Writ of Certiorari to review the decision of the United States Court of Appeal for the Ninth Circuit.

Dated: October 11, 1995.

Respectfully Submitted,

LAW OFFICES OF
MICHAEL R. MCDONNELL

DAVID JOSEPH MACHER
Member of the Bar
United States Supreme Court
Attorney for Petitioner
Edward Eugene Purmort

ROGER S. HANSON
Member of the Bar
United States Supreme Court
Attorney for Petitioner
Gary Tipton

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. GARY TIPTON, *Defendant-Appellant.*	No. 94-50201 D.C. No. CR-93-00777-JSL-3
UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. EDWARD PURMORT, *Defendant-Appellant.*	No. 94-50210 D.C. No. CR-93-00777-JSL-0 ORDER AND AMENDED OPINION

Appeals from the United States District Court
for the Central District of California
J. Spencer Letts, District Judge, Presiding

Argued and Submitted
January 10, 1995 – Pasadena, California

Filed May 24, 1995
Amended July 21, 1995

Before: William C. Canby, Jr., and John T. Noonan, Jr., Circuit Judges, and Samual P. King,* District Judge.

Opinion by Judge Canby; Dissent by Judge Noonan

COUNSEL

Roger S. Hanson, Santa Ana, California, for defendant-appellant Tipton.

David J. Macher, La Habra, California, for defendant-appellant Purmort.

Michael Terrell, Assistant United States Attorney, Los Angeles, California, for the plaintiff-appellee.

ORDER

The opinion filed May 24, 1995, is amended as follows:

At page 5657, fourth line from bottom of page: delete "and Purmort" before "told Ahd Haddad."

At page 5662, second paragraph, lines 8 and 11: delete "and Purmort."

At page 5663, first full paragraph, lines 10-15: delete this sentence and substitute the following:

---

* The Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

> "Tipton's request that the Haddads limit their visits to the bank, and his request that Ahd Haddad use different persons' names when purchasing cashier's checks, also suggests that Tipton was trying to draw attention away from their actions."

At page 5666 in the dissent, last paragraph, subparagraph numbered 2: delete "and Purmort."

With these amendments, a majority of the panel as constituted above has voted to deny the petitions for rehearing and to reject the suggestions for rehearing en banc. Judge Noonan would grant the petitions for rehearing and accept the suggestions for rehearing en banc.

The full court has been advised of the suggestions for rehearing en banc, and no judge of the court has requested a vote on the suggestions for rehearing en banc. Fed. R. App. P. 35(b).

The petitions for rehearing are DENIED and the suggestions for rehearing en banc are REJECTED.

OPINION

CANBY, Circuit Judge.

Gary Tipton and Edward Eugene Purmort appeal their convictions for conspiracy to structure financial transactions in violation of 18 U.S.C. Sec. 371 and for structuring a financial transaction in violation of 31 U.S.C. Sec. 5324(a)(3). We affirm.

I.

At trial, the government presented evidence establishing the following facts: In late 1987, Ahd Haddad and his wife Christine Haddad opened a business account for their "Stereo and Video Stop" store at the Loma Linda branch of Security Pacific National Bank. At the time, Tipton was the operations manager of the bank and Purmort was the bank's branch manager.

Both Tipton and Purmort participated in quarterly training sessions of bank employees. At the training sessions, employees learned that if a person came to the bank to buy cashier's checks with more than $10,000 dollars in currency on a single day, a Currency Transaction Report (CTR) would have to be filed with the Internal Revenue Service (IRS). Employees also learned that if a husband and wife had a joint account and came in with more than $10,000 dollars on a single day, a CTR would have to be filed. Tipton and Purmort both testified that in 1988, they were familiar with regulations concerning reporting of currency transactions and knew that it was illegal to structure a financial transaction in order to avoid reporting requirements.

In March, 1988, Ahd Haddad asked Tipton how he could avoid reporting his cash income to the IRS. Tipton told him that as long as he kept his deposits under $10,000, the bank did not have to file a CTR with the IRS. In June of 1988, the Haddads came into the bank with approximately $45,000 in cash with which they wished to purchase cashier's checks to pay their inventory supplier. They were sent into a conference room with Tipton and Purmort. Purmort left the room twice, then came back

into the room as the Haddads and Tipton were counting the cash and whispered to Ahd Haddad, "[y]ou're going to keep bringing this much cash, you are going to get the IRS after our asses." The cash was then used to purchase four cashier's checks, each for less than $10,000, and each of which Tipton signed on behalf of the bank. Because Tipton told Ahd Haddad to try to limit his visits to the bank as they were nervous about him coming too often, he purchased another cashier's check from a different bank to cover the remainder of the invoice. At some point in Ahd Haddad's dealings with the bank, Tipton also told him that he should use different names when purchasing cashier's checks.

In September, 1988, Ahd and Christine Haddad entered the bank with $80,000 in cash. They told Tipton that they wanted to purchase cashier's checks made out to an escrow company to be used toward the purchase of land, but they did not want their transactions reported to the IRS. Tipton suggested that they divide the $80,000 into eight deposits in the amounts of $10,000 or less. On four successive days in September, the Haddads each brought $10,000 into the bank and bought separate cashier's checks made out to the escrow company. Tipton signed for most of these checks, and Purmort told an employee to approve two of them. The bank did not file CTRs for any of the transactions.

One bank employee testified that, because she and her supervisor were concerned about the fact that CTRs weren't filed in connection with the Haddads' purchase of the eight cashiers checks, they requested photocopies and debit offsets of the cashier's checks. When the documentation arrived at the bank, the employee heard Tipton

ask her supervisor "are you trying to burn me?" Another bank employee testified that in 1989, he heard Purmort tell Tipton that Purmort was going to deny having any knowledge of "what was going on" with the Haddads to the IRS agents who were investigating the Haddads.

In August, 1993, a federal grand jury returned a two-count indictment against Ahd Haddad, Christine Haddad, Tipton, and Purmort, charging them with conspiracy to structure financial transactions in violation of 18 U.S.C. Sec. 371[1] and with structuring the $80,000 transaction for the purpose of evading currency reporting requirements in violation of 31 U.S.C. Sec. 5324(a)(3).[2] The Haddads pleaded guilty, and Ahd Haddad agreed to testify against Tipton and Purmort. At the close of the trial, the district judge instructed the jury that in order to sustain its burden of proof for the crime of structuring financial transactions, the government was required to prove beyond a reasonable doubt

> *First:* That the defendant knew of the reporting requirements, that is, that he knew that a Currency Transaction Report was required to be filed for any currency transaction over $10,000; *Second:* That the defendant knowingly structured or assisted in structuring or attempted to

---

[1] 18 U.S.C. Sec. 371 provides a punishment for conspiracy to "commit any offense against the United States."

[2] 31 U.S.C. Sec. 5324(a)(3), states that

> No person shall for the purpose of evading the reporting requirements [of specified sections of the United States Code or related regulations] . . . structure or assist in structuring . . . any transaction with one or more domestic financial institutions.

> structure or assist in structuring a currency transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements; and *Third:* That the defendant acted with knowledge that the structuring he undertook was unlawful.

After deliberating for a day, the jury found Tipton and Purmort guilty both of conspiracy to structure a financial transaction and of structuring a financial transaction. Tipton and Purmort appeal their convictions on several grounds.

II.

A. Jury Instructions

The district court did not err in instructing the jury on the elements the government was required to prove in order to convict Tipton and Purmort of assisting the Haddads in unlawfully structuring a financial transaction. The district court instructed the jury that the government was required to prove that (1) Tipton and Purmort knew of the relevant reporting requirements, (2) Tipton and Purmort knowingly assisted the Haddads in structuring their purchase of $80,000 worth of cashier's checks for the purpose of evading those reporting requirements, and (3) Tipton and Purmort knew that the structuring they assisted in undertaking was unlawful. Purmort argues that to prove defendants acted willfully, the government was also required to prove that the structuring was done for a nefarious purpose. We reject this argument. To prove that defendants acted willfully, the government was only required to prove that Tipton and Purmort knew that they were assisting the Haddads in

structuring to avoid reporting requirements, and that this structuring was unlawful. *See Ratzlaf v. United States*, 114 S. Ct. 655, 663 (1994); *United States v. Hove*, No. 93-10219, slip op. at 3709, 3713 (in order to establish that defendant was guilty of willfully structuring currency transactions "the government had to prove, and the jury had to be instructed, that [defendant] knew that the structuring he undertook was unlawful") (1995). *United States v. Weitzenhoff*, 35 F.3d 1275, 1285 (9th Cir.1993) (*as amended* August 8, 1994), *cert. denied sub nom. Mariani v. United States*, 115 S. Ct. 939 (1995) (noting that in *Ratzlaf*, the Court "construed the term 'willfully' in the anti-structuring provisions of the Bank Secrecy Act to require both that the defendant knew he was structuring transactions to avoid reporting requirements and that he knew his acts were unlawful.").

B. Sufficiency of the Evidence

Both Tipton and Purmort argue that the government did not present sufficient evidence of their knowledge that the structuring they undertook was unlawful. In deciding whether there is sufficient evidence to support a conviction, we review the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979); *United States v. Lennick*, 18 F.3d 814, 818 (9th Cir.), *cert. denied*, 115 S. Ct. 162 (1994). We conclude that the government presented sufficient evidence that Tipton and Purmort knew that the structuring they undertook was unlawful.

As the First Circuit recognized in a recent post-Ratzlaf structuring case, "willfulness, as a state of mind, can rarely be proved by [direct evidence that the defendant knew of the illegality of structuring]; instead, it is usually established by drawing reasonable inferences from the available facts." *United States v. Marder*, 48 F.3d 564, 574 (1st Cir.1995) (internal quotations and citations omitted). Thus in *Marder*, the court affirmed a conviction for structuring despite a lack of direct evidence that the defendant knew that structuring was illegal. The court reasoned that the jury could infer from the fact that the defendant had his wife make cash transactions at three separate banks that the defendant was trying to conceal his structuring, and from that inference could infer that the defendant knew that the structuring was unlawful. The First Circuit's approach is in accord with *Ratzlaf*, in which the Supreme Court noted that "[a] jury may . . . find the requisite knowledge [that the structuring was unlawful] on defendant's part by drawing reasonable inferences from the evidence of defendant's conduct. . . ." *Ratzlaf*, 114 S. Ct. at 663 n.19. Thus the jury could consider circumstantial evidence in determining whether Tipton and Purmort knew that the structuring in which they assisted was unlawful.

The government introduced sufficient circumstantial evidence at trial to prove beyond a reasonable doubt that Tipton and Purmort knew that assisting the Haddads in dividing up their $80,000 purchase of cashier's checks to avoid having the bank file a CTR was unlawful. The government introduced evidence that Tipton and Purmort participated in training sessions covering regulations regarding reporting requirements, and both Tipton

and Purmort testified that in 1988 they knew it was illegal to structure financial transactions in order to avoid reporting requirements. In the context of convictions for willful failure to file federal income tax returns, we have held that evidence of the defendant's knowledge of his or her general obligation to file tax returns can support a jury's inference that the defendant knew that he or she violated the law in the failure to file a tax return for which he or she is charged. *United States v. Poschwatta*, 829 F.2d 1477, 1481 (9th Cir.1987), *cert. denied*, 484 U.S. 1064 (1988) (evidence that the defendant knew the possible criminal penalties for failure to file tax returns tends to show that the defendant acted willfully in the failure to file tax returns for which he is charged); *United States v. Sullivan*, 369 F. Supp. 568, 568-69 (D.Mont.1974) (where defendant was certified public accountant who failed to file tax returns for several years, there was sufficient evidence from which jury could infer that defendant's failure to file was willful despite a lack of evidence that the defendant was attempting to conceal his income). In this case, the jury could infer from evidence that Tipton and Purmort generally knew what structuring was – and that it was illegal – and that Tipton and Purmort knew it was illegal to assist the Haddads in dividing up their $80,000 transaction to avoid having a CTR filed.

The government introduced other circumstantial evidence that Tipton and Purmort knew that assisting the Haddads in avoiding reporting requirements was illegal. Purmort's comment to Ahd Haddad that "[y]ou're going to keep bringing this much cash, you are going to get the IRS after our asses" tends to show that he realized the IRS would have a problem with a cash transaction of over

$40,000 being made without a CTR being filed. The fact that Tipton told Ahd Haddad to limit his visits to the bank, and that Tipton told him to use different people's names when purchasing cashier's checks, also suggests that Tipton knew that there was something unlawful about the way in which the Haddads were purchasing cashier's checks. In addition, the fact that Tipton asked a co-worker who received photocopies of debit offsets for the eight cashier's checks whether she was trying to "burn" him creates an inference that he knew he might be in trouble for having assisted in the transaction at issue. Finally, the fact that Purmort told Tipton that Purmort would deny to investigators that he knew "what was going on" with the Haddads suggests that he knew that he should not have facilitated the Haddads' structuring of their $80,000 transaction.

Some of Tipton and Purmort's respective statements suggest that the two were not only aware that there was something wrong with the Haddads' manner of purchasing cashier's checks, but also are evidence that they wished to conceal information about their involvement with the Haddads. Purmort's statement that he would deny knowledge of the Haddads' affairs is evidence of willfulness. *See United States v. Marabelles*, 724 F.2d 1374, 1379-80 (9th Cir.1984) (fact that defendant lied to IRS agents about his tax record-keeping was evidence that he willfully attempted to evade taxes). Tipton's request that the Haddads limit their visits to the bank, and his request that Ahd Haddad use different persons' names when purchasing cashier's checks, also suggests that Tipton was trying to draw attention away from their actions. In the context of prosecution for attempted tax

evasion, we have held that evidence of attempts to conceal pertinent information can be treated as circumstantial evidence that a defendant knew he or she was violating the law. *Id.* at 1377. In this case, the jury could have treated evidence that Tipton and Purmort wished to reduce the risk that the IRS would discover their dealings with the Haddads as circumstantial evidence that the two were aware that they were violating the law.

We conclude that the government presented sufficient evidence that Tipton and Purmort knew that assisting the Haddads in structuring their $80,000 transaction was illegal to support their convictions.

C. Remaining Issues

Tipton and Purmort both attack the district court proceedings on a variety of other grounds, including challenges to the admission or exclusion of evidence at trial. None of these challenges is meritorious.

AFFIRMED.

NOONAN, Circuit Judge, dissenting.

The statute governing this case is 31 U.S.C. Sec. 5324(a)(3), which provides:

> No person shall for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section
>
> . . .

> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.
>
> The statutory crossreference to Sec. 5325 does not appear to be relevant here. The statutory crossreference to Sec. 5313 is to authorization of the Secretary of the Treasury to prescribe the reporting of certain monetary transactions by financial institutions; under the authority of this statute, the Secretary has prescribed the reporting of transactions in currency of more than $10,000. 31 C.F.R. Sec. 103.22(a)(1). The regulations specify:
>
> > Multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any one business day. *Id.*

The Supreme Court has authoritatively construed the statute in *Ratzlaf v. United States*, 114 S. Ct. 655 (1994). The holding of this case is that for a defendant to be guilty of violating Sec. 5324(a)(3), "the jury had to find he knew the structuring in which he engaged was unlawful." *Id.* at 663. The reasoning that leads to this conclusion makes clear that it is not enough to establish guilt to prove that the defendant knew "that a financial institution must report currency transactions in excess of $10,000 and his intention to avoid such reporting." *Id.* at 657. It must be proved that the defendant's conduct was "willful," i.e., that "he was aware of the illegality of the 'structuring' in which he engaged." *Id.* It must be shown that he "knew

the structuring he undertook was unlawful." *Id.* at 658. It is not enough that, as in Ratzlaf, the defendant "admits that he structured cash transactions, and that he did so with knowledge of, and a purpose to avoid, the bank's duty to report currency transactions in excess of $10,000." *Id.* at 659. There must be "a 'specific intent to commit the crime,' i.e. 'a purpose to disobey the law.' " *Id.* There must be proof, as the Supreme Court quotes the First Circuit, of a "bad purpose to disobey the law." *Id.*

In the course of its reasoning the Supreme Court observed that "structuring" of financial transactions was not in itself evil and that structuring a transaction to avoid a tax was legitimate. *Id.* at 661-662. The Supreme Court further observed that the principal purpose of the statute was to give federal agencies additional tools to investigate and curb money laundering " 'by which criminals have successfully disguised the nature and source of funds from their illegal enterprises.' " *Id.* at 661, n.11, quoting S. Rep. No. 94-443, pp. 1-2 (1986).

Ratzlaf may be read as though it did not really mean what it said when it declared that the prosecution must show that the defendant "knew the structuring in which he was engaged was unlawful." *Ratzlaf,* 114 S. Ct. at 663. In other words, it may be read as requiring a ritual of recital to the jury of an instruction that the defendant must have acted wilfully but as not requiring any proof of such willfulness in the strong sense defined by the Court. In effect, although not in words, that is what the majority does. Without evidence showing beyond a reasonable doubt that Tipton and Purmort knew that the particular actions in which they engaged constituted illegal structuring, the majority upholds their convictions.

We all agree that the defendants here, like Ratzlaf, knew that there was a law against the structuring of bank deposits and that therefore structuring as defined by the statute was unlawful. We also agree that Haddad wanted to keep his cash transactions secret, either from fear of the Syrian government or from fear of the IRS. We all agree that the defendants here, like Ratzlaf, wanted to avoid a report of the transactions. The question is whether Tipton and Purmort knew that the transactions they engaged in in September 1988 constituted unlawful structuring.

As proof of their knowledge, the majority opinion cites these facts:

1. That Purmort in June 1988 told Haddad that if he kept on bringing in this much cash, he would "get the IRS after our asses."

2. That at some point in the summer of 1988 Tipton told Haddad to limit his visits to the bank.

3. That, according to Haddad, Tipton told him to use different people's names when purchasing cashier's checks, "not just my name come up, but different people."

4. That, after all of the September 1988 transactions were completed, other bank employees obtained photocopies of the cashier's checks and Tipton asked one of them, "Are you trying to frame me"?

5. That Purmort told Tipton that Purmort would deny to investigators that he knew what was going on with the Haddads.

The quoted language from Purmort to Haddad in June expresses colloquially the idea that if the bank handled large cash transactions the IRS would go after the people with the cash. It does not amount to any evidence of specific intent on Purmort's part to break the law. If anything, it shows a desire not to be associated with lawbreaking. Similarly the comments to Haddad to limit his visits shows an intent not to break the law. The recommendation to Haddad to have "different people" buy cashier's checks is as consistent with an intent to keep Haddad technically within the law as it is with a bad purpose to break the law. It is not a crime for a person with a cash business to want to keep the extent of his cash business from the knowledge of the IRS and manage his bank deposits to achieve that result. *Ratzlaf v. United States,* 114 S. Ct. 655 at 661 (1994) (semble). The statute the bankers are charged with violating is not a statute that makes it a crime to keep a taxpayer's cash income from knowledge of the IRS and to arrange banking transactions with that end in view. It is startling, to say the least, that the government's brief treats Tipton's early 1988 advice to Haddad "to keep his cash transactions below $10,000, so no filing would have to be made to the IRS" as advice to Haddad "to structure his cash transactions." Appellee's Brief, p.5. Plainly, the government uses the verb "structure" to describe what the government views as criminal conduct. It is the same position that the government brief took in *Ratzlaf* and that the Supreme Court implicitly repudiated.

The other evidence relied on by the majority opinion is evidence of nervousness after the event. Knowing that there was a law against structuring, the bankers could

reasonably be nervous when other bank employees questioned what they had done and an investigation was begun. Understandable [sic] later nervousness cannot be retroactively converted into proof of specific intent to violate the statute.

We all agree as to the standard of evidence set by *Jackson v. Virginia*, 443 U.S. 307, 324 (1978); the evidence must be looked at from the government's perspective, and we must then ask whether any reasonable juror could find the defendants guilty beyond a reasonable doubt. What is sometimes forgotten in applying this standard is that, while we adopt the government's perspective, we must still ask whether there is proof beyond a reasonable doubt. If adoption of the government's perspective means the resolution of all doubts in favor of the government, the effect is to eliminate reasonable doubt from the review and to substitute in its place the presumption that the defendant is guilty, a presumption rebuttable only by the defendant producing unimpeachable evidence of his innocence. Such a way of reasoning appears to be what drives the majority opinion to its conclusion of affirmance. It does not appear to me to be consistent with a standard requiring proof beyond a reasonable doubt of each element of the crime charged.

On the basis of the evidence set out in the majority opinion, I find it very difficult to believe that any reasonable person could find the evidence showed that Purmort and Tipton, beyond a reasonable doubt, knew that the particular transactions they entered into with the Haddads were unlawful structuring. Setting aside their own testimony that they did not know the transactions to be unlawful, we are still confronted with the fact that

they openly carried out the transactions in a bank with the knowledge of a substantial number of the bank's employees; they made no attempt to hide these transactions from them; and the regulations of the Secretary, remarkably detailed as they are on many points, do not declare that a husband and wife's cash deposits on a given date must be consolidated for purposes of a report. Proof of the defendants' willfulness, specific intent to break the law, bad purpose is simply not there beyond a reasonable doubt.

I respectfully disagree.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. GARY TIPTON, *Defendant-Appellant.*	No. 94-50201 D.C. No. CR-93-00777-JSL-3

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. EDWARD PURMORT, *Defendant-Appellant.*	No. 94-50210 D.C. No. CR-93-00777-JSL-0 OPINION

Appeals from the United States District Court
for the Central District of California
J. Spencer Letts, District Judge, Presiding

Argued and Submitted
January 10, 1995 – Pasadena, California

Filed May 24, 1995

Before: William C. Canby, Jr., and John T. Noonan, Jr., Circuit Judges, and Samuel P. King,* District Judge.

Opinion by Judge Canby; Dissent by Judge Noonan

COUNSEL

Roger S. Hanson, Santa Ana, California, for defendant-appellant Tipton.

David J. Macher, La Habra, California, for defendant-appellant Purmort.

Michael Terrell, Assistant United States Attorney, Los Angeles, California, for the plaintiff-appellee.

OPINION

CANBY, Circuit Judge.

Gary Tipton and Edward Eugene Purmort appeal their convictions for conspiracy to structure financial transactions in violation of 18 U.S.C. § 371 and for structuring a financial transaction in violation of 31 U.S.C. § 5324(a)(3). We affirm.

---

* The Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

I.

At trial, the government presented evidence establishing the following facts: In late 1987, Ahd Haddad and his wife Christine Haddad opened a business account for their "Stereo and Video Stop" store at the Loma Linda branch of Security Pacific National Bank. At the time, Tipton was the operations manager of the bank and Purmort was the bank's branch manager.

Both Tipton and Purmort participated in quarterly training sessions of bank employees. At the training sessions, employees learned that if a person came to the bank to buy cashier's checks with more than $10,000 dollars in currency on a single day, a Currency Transaction Report (CTR) would have to be filed with the Internal Revenue Service (IRS). Employees also learned that if a husband and wife had a joint account and came in with more than $10,000 dollars on a single day, a CTR would have to be filed. Tipton and Purmort both testified that in 1988, they were familiar with regulations concerning reporting of currency transactions and knew that it was illegal to structure a financial transaction in order to avoid reporting requirements.

In March, 1988, Ahd Haddad asked Tipton how he could avoid reporting his cash income to the IRS. Tipton told him that as long as he kept his deposits under $10,000, the bank did not have to file a CTR with the IRS. In June of 1988, the Haddads came into the bank with approximately $45,000 in cash with which they wished to purchase cashier's checks to pay their inventory supplier. They were sent into a conference room with Tipton and Purmort. Purmort left the room twice, then came back

into the room as the Haddads and Tipton were counting the cash and whispered to Ahd Haddad, "[y]ou're going to keep bringing this much cash, you are going to get the IRS after our asses." The cash was then used to purchase four cashier's checks, each for less than $10,000, and each of which Tipton signed on behalf of the bank. Because Tipton and Purmort told Ahd Haddad to try to limit his visits to the bank as they were nervous about him coming too often, he purchased another cashier's check from a different bank to cover the remainder of the invoice. At some point in Ahd Haddad's dealings with the bank, Tipton also told him that he should use different names when purchasing cashier's checks.

In September, 1988, Ahd and Christine Haddad entered the bank with $80,000 in cash. They told Tipton that they wanted to purchase cashier's checks made out to an escrow company to be used toward the purchase of land, but they did not want their transactions reported to the IRS. Tipton suggested that they divide the $80,000 into eight deposits in the amounts of $10,000 or less. On four successive days in September, the Haddads each brought $10,000 into the bank and bought separate cashier's checks made out to the escrow company. Tipton signed for most of these checks, and Purmort told an employee to approve two of them. The bank did not file CTRs for any of the transactions.

One bank employee testified that, because she and her supervisor were concerned about the fact that CTRs weren't filed in connection with the Haddads' purchase of the eight cashiers checks, they requested photocopies and debit offsets of the cashier's checks. When the documentation arrived at the bank, the employee heard Tipton

ask her supervisor "are you trying to burn me?" Another bank employee testified that in 1989, he heard Purmort tell Tipton that Purmort was going to deny having any knowledge of "what was going on" with the Haddads to the IRS agents who were investigating the Haddads.

In August, 1993, a federal grand jury returned a two-count indictment against Ahd Haddad, Christine Haddad, Tipton, and Purmort, charging them with conspiracy to structure financial transactions in violation of 18 U.S.C. § 371[1] and with structuring the $80,000 transaction for the purpose of evading currency reporting requirements in violation of 31 U.S.C. § 5324(a)(3).[2] The Haddads pleaded guilty, and Ahd Haddad agreed to testify against Tipton and Purmort. At the close of the trial, the district judge instructed the jury that in order to sustain its burden of proof for the crime of structuring financial transactions, the government was required to prove beyond a reasonable doubt

> *First:* That the defendant knew of the reporting requirements, that is, that he knew that a Currency Transaction Report was required to be filed for any currency transaction over $10,000; *Second:* That the defendant knowingly structured or assisted in structuring or attempted to

---

[1] 18 U.S.C. § 371 provides a punishment for conspiracy to "commit any offense against the United States."

[2] 31 U.S.C. § 5324(a)(3), states that

> No person shall for the purpose of evading the reporting requirements [of specified sections of the United States Code or related regulations] . . . structure or assist in structuring . . . any transaction with one or more domestic financial institutions.

> structure or assist in structuring a currency transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements; and *Third:* That the defendant acted with knowledge that the structuring he undertook was unlawful.

After deliberating for a day, the jury found Tipton and Purmort guilty both of conspiracy to structure a financial transaction and of structuring a financial transaction. Tipton and Purmort appeal their convictions on several grounds.

II.

A. Jury Instructions

The district court did not err in instructing the jury on the elements the government was required to prove in order to convict Tipton and Purmort of assisting the Haddads in unlawfully structuring a financial transaction. The district court instructed the jury that the government was required to prove that (1) Tipton and Purmort knew of the relevant reporting requirements, (2) Tipton and Purmort knowingly assisted the Haddads in structuring their purchase of $80,000 worth of cashier's checks for the purpose of evading those reporting requirements, and (3) Tipton and Purmort knew that the structuring they assisted in undertaking was unlawful. Purmort argues that to prove defendants acted willfully, the government was also required to prove that the structuring was done for a nefarious purpose. We reject this argument. To prove that defendants acted willfully, the government was only required to prove that Tipton and Purmort knew that they were assisting the Haddads in

structuring to avoid reporting requirements, and that this structuring was unlawful. See *Ratzlaf v. United States*, 114 S. Ct. 655, 663 (1994); *United States v. Hove*, No. 93-10219, slip op. at 3709, 3713 (in order to establish that defendant was guilty of willfully structuring currency transactions "the government had to prove, and the jury had to be instructed, that [defendant] knew that the structuring he undertook was unlawful") (1995). *United States v. Weitzenhoff*, 35 F.3d 1275, 1285 (9th Cir.1993) (*as amended* August 8, 1994), *cert. denied sub nom. Mariani v. United States*, 115 S. Ct. 939 (1995) (noting that in *Ratzlaf*, the Court "construed the term 'willfully' in the anti-structuring provisions of the Bank Secrecy Act to require both that the defendant knew he was structuring transactions to avoid reporting requirements and that he knew his acts were unlawful.").

B. Sufficiency of the Evidence

Both Tipton and Purmort argue that the government did not present sufficient evidence of their knowledge that the structuring they undertook was unlawful. In deciding whether there is sufficient evidence to support a conviction, we review the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979); *United States v. Lennick*, 18 F.3d 814, 818 (9th Cir.), *cert. denied*, 115 S. Ct. 162 (1994). We conclude that the government presented sufficient evidence that Tipton and Purmort knew that the structuring they undertook was unlawful.

As the First Circuit recognized in a recent post-*Ratzlaf* structuring case, "willfulness, as a state of mind, can rarely be proved by [direct evidence that the defendant knew of the illegality of structuring]; instead, it is usually established by drawing reasonable inferences from the available facts." *United States v. Marder*, 48 F.3d 564, 574 (1st Cir.1995) (internal quotations and citations omitted). Thus in *Marder*, the court affirmed a conviction for structuring despite a lack of direct evidence that the defendant knew that structuring was illegal. The court reasoned that the jury could infer from the fact that the defendant had his wife make cash transactions at three separate banks that the defendant was trying to conceal his structuring, and from that inference could infer that the defendant knew that the structuring was unlawful. The First Circuit's approach is in accord with *Ratzlaf*, in which the Supreme Court noted that "[a] jury may . . . find the requisite knowledge [that the structuring was unlawful] on defendant's part by drawing reasonable inferences from the evidence of defendant's conduct. . . . " *Ratzlaf*, 114 S. Ct. at 663 n.19. Thus the jury could consider circumstantial evidence in determining whether Tipton and Purmort knew that the structuring in which they assisted was unlawful.

The government introduced sufficient circumstantial evidence at trial to prove beyond a reasonable doubt that Tipton and Purmort knew that assisting the Haddads in dividing up their $80,000 purchase of cashier's checks to avoid having the bank file a CTR was unlawful. The government introduced evidence that Tipton and Purmort participated in training sessions covering regulations regarding reporting requirements, and both Tipton

and Purmort testified that in 1988 they knew it was illegal to structure financial transactions in order to avoid reporting requirements. In the context of convictions for willful failure to file federal income tax returns, we have held that evidence of the defendant's knowledge of his or her general obligation to file tax returns can support a jury's inference that the defendant knew that he or she violated the law in the failure to file a tax return for which he or she is charged. *United States v. Poschwatta*, 829 F.2d 1477, 1481 (9th Cir.1987), *cert. denied*, 484 U.S. 1064 (1988) (evidence that the defendant knew the possible criminal penalties for failure to file tax returns tends to show that the defendant acted willfully in the failure to file tax returns for which he is charged); *United States v. Sullivan*, 369 F. Supp. 568, 568-69 (D.Mont.1974) (where defendant was certified public accountant who failed to file tax returns for several years, there was sufficient evidence from which jury could infer that defendant's failure to file was willful despite a lack of evidence that the defendant was attempting to conceal his income). In this case, the jury could infer from evidence that Tipton and Purmort generally knew what structuring was – and that it was illegal – and that Tipton and Purmort knew it was illegal to assist the Haddads in dividing up their $80,000 transaction to avoid having a CTR filed.

The government introduced other circumstantial evidence that Tipton and Purmort knew that assisting the Haddads in avoiding reporting requirements was illegal. Purmort's comment to Ahd Haddad that "[y]ou're going to keep bringing this much cash, you are going to get the IRS after our asses" tends to show that he realized the IRS would have a problem with a cash transaction of over

$40,000 being made without a CTR being filed. The fact that Tipton told Ahd Haddad to limit his visits to the bank, and that Tipton told him to use different people's names when purchasing cashier's checks, also suggests that Tipton and Purmort knew that there was something unlawful about the way in which the Haddads were purchasing cashier's checks. In addition, the fact that Tipton asked a co-worker who received photocopies of debit offsets for the eight cashier's checks whether she was trying to "burn" him creates an inference that he knew he might be in trouble for having assisted in the transaction at issue. Finally, the fact that Purmort told Tipton that Purmort would deny to investigators that he knew "what was going on" with the Haddads suggests that he knew that he should not have facilitated the Haddads' structuring of their $80,000 transaction.

Some of Tipton and Purmort's respective statements suggest that the two were not only aware that there was something wrong with the Haddads' manner of purchasing cashier's checks, but also are evidence that they wished to conceal information about their involvement with the Haddads. Purmort's statement that he would deny knowledge of the Haddads' affairs is evidence of willfulness. *See United States v. Marabelles*, 724 F.2d 1374, 1379-80 (9th Cir.1984) (fact that defendant lied to IRS agents about his tax record-keeping was evidence that he willfully attempted to evade taxes). Tipton's and Purmort's request that the Haddads limit their visits to the bank, and Tipton's request that Ahd Haddad use different people's names when purchasing cashier's checks,

also suggests that the bankers were trying to draw attention away from their actions. In the context of prosecution for attempted tax evasion, we have held that evidence of attempts to conceal pertinent information can be treated as circumstantial evidence that a defendant knew he or she was violating the law. *Id.* at 1377. In this case, the jury could have treated evidence that Tipton and Purmort wished to reduce the risk that the IRS would discover their dealings with the Haddads as circumstantial evidence that the two were aware that they were violating the law.

We conclude that the government presented sufficient evidence that Tipton and Purmort knew that assisting the Haddads in structuring their $80,000 transaction was illegal to support their convictions.

C. Remaining Issues

Tipton and Purmort both attack the district court proceedings on a variety of other grounds, including challenges to the admission or exclusion of evidence at trial. None of these challenges is meritorious.

AFFIRMED.

NOONAN, Circuit Judge, dissenting.

The statute governing this case is 31 U.S.C. § 5324(a)(3), which provides:

> No person shall for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section
>
> . . .

> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

The statutory crossreference to § 5325 does not appear to be relevant here. The statutory crossreference to § 5313 is to authorization of the Secretary of the Treasury to prescribe the reporting of certain monetary transactions by financial institutions; under the authority of this statute, the Secretary has prescribed the reporting of transactions in currency of more than $10,000. 31 C.F.R. § 103.22(a)(1). The regulations specify:

> Multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any one business day. *Id.*

The Supreme Court has authoritatively construed the statute in *Ratzlaf v. United States*, 114 S. Ct. 655 (1994). The holding of this case is that for a defendant to be guilty of violating § 5324(a)(3), "the jury had to find he knew the structuring in which he engaged was unlawful." *Id.* at 663. The reasoning that leads to this conclusion makes clear that it is not enough to establish guilt to prove that the defendant knew "that a financial institution must report currency transactions in excess of $10,000 and his intention to avoid such reporting." *Id.* at 657. It must be proved that the defendant's conduct was "willful," i.e., that "he was aware of the illegality of the 'structuring' in which he engaged." *Id.* It must be shown that he "knew the structuring he undertook was unlawful." *Id.* at 658. It

is not enough that, as in *Ratzlaf*, the defendant "admits that he structured cash transactions, and that he did so with knowledge of, and a purpose to avoid, the bank's duty to report currency transactions in excess of $10,000." *Id.* at 659. There must be "a 'specific intent to commit the crime,' i.e. 'a purpose to disobey the law.' " *Id.* There must be proof, as the Supreme Court quotes the First Circuit, of a "bad purpose to disobey the law." *Id.*

In the course of its reasoning the Supreme Court observed that "structuring" of financial transactions was not in itself evil and that structuring a transaction to avoid a tax was legitimate. *Id.* at 661-662. The Supreme Court further observed that the principal purpose of the statute was to give federal agencies additional tools to investigate and curb money laundering " 'by which criminals have successfully disguised the nature and source of funds from their illegal enterprises.' " *Id.* at 661, n.11, quoting S. Rep. No. 94-443, pp. 1-2 (1986).

Ratzlaf may be read as though it did not really mean what it said when it declared that the prosecution must show that the defendant "knew the structuring in which he was engaged was unlawful." *Ratzlaf*, 114 S. Ct. at 663. In other words, it may be read as requiring a ritual of recital to the jury of an instruction that the defendant must have acted wilfully but as not requiring any proof of such willfulness in the strong sense defined by the Court. In effect, although not in words, that is what the majority does. Without evidence showing beyond a reasonable doubt that Tipton and Purmort knew that the particular actions in which they engaged constituted illegal structuring, the majority upholds their convictions.

We all agree that the defendants here, like Ratzlaf, knew that there was a law against the structuring of bank deposits and that therefore structuring as defined by the statute was unlawful. We also agree that Haddad wanted to keep his cash transactions secret, either from fear of the Syrian government or from fear of the IRS. We all agree that the defendants here, like Ratzlaf, wanted to avoid a report of the transactions. The question is whether Tipton and Purmort knew that the transactions they engaged in in September 1988 constituted unlawful structuring.

As proof of their knowledge, the majority opinion cites these facts:

1. That Purmort in June 1988 told Haddad that if he kept on bringing in this much cash, he would "get the IRS after our asses."

2. That at some point in the summer of 1988 Tipton and Purmort told Haddad to limit his visits to the bank.

3. That, according to Haddad, Tipton told him to use different people's names when purchasing cashier's checks, "not just my name come up, but different people."

4. That, after all of the September 1988 transactions were completed, other bank employees obtained photocopies of the cashier's checks and Tipton asked one of them, "Are you trying to frame me"?

5. That Purmort told Tipton that Purmort would deny to investigators that he knew what was going on with the Haddads.

The quoted language from Purmort to Haddad in June expresses colloquially the idea that if the bank handled large cash transactions the IRS would go after the people with the cash. It does not amount to any evidence of specific intent on Purmort's part to break the law. If anything, it shows a desire not to be associated with lawbreaking. Similarly the comments to Haddad to limit his visits shows an intent not to break the law. The recommendation to Haddad to have "different people" buy cashier's checks is as consistent with an intent to keep Haddad technically within the law as it is with a bad purpose to break the law. It is not a crime for a person with a cash business to want to keep the extent of his cash business from the knowledge of the IRS and manage his bank deposits to achieve that result. *Ratzlaf v. United States,* 114 S. Ct. 655 at 661 (1994) (semble). The statute the bankers are charged with violating is not a statute that makes it a crime to keep a taxpayer's cash income from knowledge of the IRS and to arrange banking transactions with that end in view. It is startling, to say the least, that the government's brief treats Tipton's early 1988 advice to Haddad "to keep his cash transactions below $10,000, so no filing would have to be made to the IRS" as advice to Haddad "to structure his cash transactions." Appellee's Brief, p. 5. Plainly, the government uses the verb "structure" to describe what the government views as criminal conduct. It is the same position that the government brief took in *Ratzlaf* and that the Supreme Court implicitly repudiated.

The other evidence relied on by the majority opinion is evidence of nervousness after the event. Knowing that there was a law against structuring, the bankers could

reasonably be nervous when other bank employees questioned what they had done and an investigation was begun. Understandable later nervousness cannot be retroactively converted into proof of specific intent to violate the statute.

We all agree as to the standard of evidence set by *Jackson v. Virginia*, 443 U.S. 307, 324 (1978): the evidence must be looked at from the government's perspective, and we must then ask whether any reasonable juror could find the defendants guilty beyond a reasonable doubt. What is sometimes forgotten in applying this standard is that, while we adopt the government's perspective, we must still ask whether there is proof beyond a reasonable doubt. If adoption of the government's perspective means the resolution of all doubts in favor of the government, the effect is to eliminate reasonable doubt from the review and to substitute in its place the presumption that the defendant is guilty, a presumption rebuttable only by the defendant producing unimpeachable evidence of his innocence. Such a way of reasoning appears to be what drives the majority opinion to its conclusion of affirmance. It does not appear to me to be consistent with a standard requiring proof beyond a reasonable doubt of each element of the crime charged.

On the basis of the evidence set out in the majority opinion, I find it very difficult to believe that any reasonable person could find the evidence showed that Purmort and Tipton, beyond a reasonable doubt, knew that the particular transactions they entered into with the Haddads were unlawful structuring. Setting aside their own testimony that they did not know the transactions to be unlawful, we are still confronted with the fact that

they openly carried out the transactions in a bank with the knowledge of a substantial number of the bank's employees; they made no attempt to hide these transactions from them; and the regulations of the Secretary, remarkably detailed as they are on many points, do not declare that a husband and wife's cash deposits on a given date must be consolidated for purposes of a report. Proof of the defendants' willfulness, specific intent to break the law, bad purpose is simply not there beyond a reasonable doubt.

I respectfully disagree.